

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE	: No. 2:12-md-02323-AB
PLAYERS' CONCUSSION INJURY	:
LITIGATION	: MDL No. 2323
_____	:
	: Hon. Anita B. Brody
THIS DOCUMENT RELATES TO:	:
	:
ALL ACTIONS	:
_____	:

**PROPOSED CO-LEAD CLASS COUNSEL'S RESPONSE TO
THE SEAU FAMILY'S STATEMENT REGARDING
PROPOSED CLASS ACTION SETTLEMENT**

After this Court's Order of January 14, 2014 denying *without prejudice* the proposed Co-Lead Class Counsel's motion for preliminary approval of proposed class action settlement, the Seau family filed a Statement Regarding the Proposed Class Action Settlement. [Rec. Doc. 5695]. Co-Lead Counsel submit this response thereto.

As per the Court's Order, the economic assumptions underlying the proposed settlement and supporting documentation will be examined by the Court and the Special Master. If and when a settlement receives preliminary approval, all class members, including the Seau family, will have an opportunity to evaluate the settlement and to decide whether they want to opt out, to remain in the class and/or to object thereto at a Fairness Hearing. Class members who opt out will not have standing to object.

Despite the fact that Co-Lead Counsel's motion and proposed class settlement have been rendered moot as a result of this Court's Order, the Seau family nonetheless protests. Amongst other things, they make two substantive comments: (1) the Settlement Agreement does not

sufficiently address wrongful death claims of the children of Mr. Seau; and (2) the proposed stay in the Settlement Agreement unnecessarily detains persons who opt out of the settlement beyond the Court's determination following the final Fairness Hearing. Both arguments are summarily addressed.

Whether the proposed Settlement Agreement sufficiently compensates Derivative Claimants, who are defined by the terms of the Settlement Agreement and which definition includes wrongful death claimants such as Mr. Seau's children, is a matter for the Court's consideration at the final Fairness Hearing. Courts routinely have finally approved class/mass settlements with these terms and provided like compensation to derivative claimants. *See, e.g., In re Diet Drug Litigation*, MDL No. 1203, Nationwide Class Action Settlement Agreement with American Home Products Corporation (as Amended) §IV(B)(1(f) at 38 (E.D. Pa.)(Bechtle/Bartle, J.)(2% for derivative claimants shared pro rata amongst all derivative claimants);¹ *In re Vioxx Products Liability Litigation*, MDL No. 1657, Settlement Agreement §17.1.18 at 55 (E.D.La.)(Fallon, J.)(derivative claimants share in primary claim);² and *In re DePuy Orthopaedics, Inc. ASR Hip Implant Products Litigation*, MDL No. 2197, Settlement Agreement §1.2.22 (N.D. Ohio)(Katz, J.)(same).³

¹Available at <http://www.settlementdietdrugs.com/pdfs/AmendedSettlement%20Agreement%20.pdf>.

²Available at <http://www.officialvioxxsettlement.com/documents/Master%20Settlement%20Agreement%20-%20new.pdf>

³Available at <http://www.officialvioxxsettlement.com/documents/Master%20Settlement%20Agreement%20-%20new.pdf>

Regarding the effect of the stay on opt-outs, Co-Lead Class Counsel recognize that the language of Section 14.2 (a) is not artfully phrased and it will be revised to avoid the issue raised by the Seau family. In particular, it was intended that opt-outs would become effective upon the Final Approval date, *i.e.*, the date on which the district court enters the Final Order and Judgment, and the document will be modified to reflect this intent.

Without a motion before the Court, the Seau family's statement is nothing other than editorial comment. Co-Lead Class Counsel will respond fully to any objection to the settlement at the appropriate time.

Dated: February 3, 2014

Respectfully submitted,

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